

REMARKS/ARGUMENTS

This is responsive to the Non-Final Office Action mailed December 10, 2009. In that Office Action, claims 31-33 were rejected under 35 U.S.C. §102(e) as being anticipated by Edoga et al., U.S. Patent No. 7,335,212 ("Edoga"). Claims 1-17 and 19-33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Edoga in view of Miller et al., U.S. Patent No. 6,709,442 ("Miller").

With this Response, the claims have not been amended. Claims 1-17 and 19-33 remain pending in the application and are presented for reconsideration and allowance.

Relied Upon Disclosure of Edoga Does Not Qualify as Prior Art

In rejecting the pending claims under §102 or §103, the Office Action makes repeated reference to FIG. 16 and column 6, lines 30-40 of Edoga. For example, the Office Action appears to interpret FIG. 16 and column 6, lines 30-40 as disclosing barbs/staple guides 140 being slidably disposed within paths/tracks 141. Regardless of whether this characterization is correct, FIG. 16 and column 6, lines 30-40 of Edoga do not qualify as prior art to the pending application.

In particular, Edoga was filed December 16, 2003 as USSN 10/737,630 ("the Edoga '630 Non-Provisional"). The Edoga '630 Non-Provisional application claims priority to provisional application Serial No. 60/433,687, filed December 16, 2002 ("the Edoga '687 Provisional"). FIG. 16 of the Edoga '630 Non-Provisional is not disclosed in the Edoga '687 Provisional. Similarly, the language relating to FIG. 16 (i.e., column 6, lines 30-40 of Edoga) is not disclosed in the Edoga '687 Provisional.

Based upon the above, because FIG. 16 and column 6, lines 30-40 were not disclosed in the Edoga '687 Provisional, the effective priority date of FIG. 16 and column 6, lines 30-40 is the Edoga '630 Non-Provisional filing date of December 16, 2003. The pending application was filed on September 26, 2003, well before this prior art critical date. Thus, FIG. 16, column 6, lines 30-40, and any other alleged disclosure attributable to Edoga relating to barbs/staple guides 140 being located in paths/tracks 141, is not prior art to the pending application.

Withdrawal of all rejections based upon the incorrect application of Edoga is respectfully requested.

Independent Claim 1

The rejection of claim 1 as being made obvious by Edoga in view of Miller should be withdrawn for at least the above reason that the rejection is premised upon non-prior art. In addition, claim 1 recites that the plurality of self-closing clips are ejectable from the support structure independently of the plurality of barbs. In contrast, even if Edoga were modified to replace the wire segments 134 with the clips 10 of Miller, the barbs/staple guides 140 would still be provided. As made clear by FIGS. 4-7 of Edoga, the clips 134 (and thus the “replacement clips 10 of Miller) are in contact with the barbs/staple guides 140 during ejection thereof. Thus, the clips 134 (or the clips 10 of Miller) are not ejectable independently of the barbs/staple guides 140 as claimed. Claim 1 is not made obvious by Edoga in view of Miller.

Independent Claims 17, 22, and 28

In rejecting each of independent claims 17, 22, and 28, the Office Action directly relies upon FIG. 16 and column 6, lines 30-40 of Edoga. As described above, these alleged disclosures of Edoga do not qualify as prior art to the pending application. Withdrawal of the rejections of independent claim 17, 22, and 28 is respectfully requested.

Independent Claim 31

In rejecting independent claim 31, the Office Action incorrectly relies upon FIG. 16 and column 6, lines 30-40 as purportedly disclosing the movable barbs as claimed. As described above, these alleged disclosures of Edoga are not prior art to the pending application. In addition, the Office Action asserts that FIG. 4 of Edoga discloses a “position” in which the barbs/staple guides 140 are “retracted into” the support structure/housing filler 130. Applicant respectfully disagrees. FIG. 4 clearly illustrates the barb/staple guides 140 being distally beyond the distal end of the support structure 130. Simply stated, in the arrangement of FIG. 4, the barb/staple guides 140 are not inside the support structure 130. In fact, Edoga requires the barb/staple guides 140 be outside of the support structure 130 in the arrangement of FIG. 4. The barb/staple guides 140 are not moved longitudinally in transitioning of the device from the arrangement of FIG. 4 to that of FIG. 5; instead, only the obdurator 118 is moved. Distal movement of obdurator 118 from the position of FIG. 4 to the position of FIG. 5 causes the

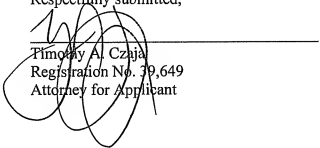
barb/staple guides 140 to deflect radially outwardly. Were the barbs/staple guides 140 somehow “within” the support structure 130 in the arrangement of FIG. 4, radial deflection of the barb/staple guides 140 in response to distal movement of the obdurator 118 would be directly into the wall of the support structure 130. Stated otherwise, in order to “clear” the support structure 130 in transitioning from the arrangement of FIG. 4 to the arrangement of FIG. 5, the barbs/staple guides 140 must, at all times, be outside of the support structure 130. Thus, claim 31 recites additionally allowable subject matter.

The claims depending from each of independent claims 1, 17, 22, 28, and 31 are all allowable at least by virtue of their dependence upon allowable claims.

CONCLUSION

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 50-0471. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call Katrina Witschen at telephone (+1-763) 505-8418.

Respectfully submitted,



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